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**Ordinance No. \_\_\_\_\_**

Be It Ordained by the Board of County Commissioners of Clay County:

**Section 1. Title**

This Ordinance shall be known as and may be cited as the "Clay County Cable Ordinance."

**Section 1.a. Table of Contents**

**Section 2. Definitions.** For purposes of this chapter, unless the context otherwise requires:

(a) "Activated Channel" means those channels engineered at the headend of a Cable System for the provision of services generally available to residential Subscribers of the Cable System, regardless of whether such services actually are provided, including any channel designated for educational or governmental use.

(b) "Access Channel" means any Channel on a Cable System set aside without charge by the Franchisee for non-commercial, (excluding sponsorships and underwriting credits) educational and/or local governmental use.

(c) "Affiliate" means any Person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

(d) "Applicant" means any Person submitting an Application within the meaning of this Ordinance.

(e) "Application" means any proposal, submission or request to (1) construct and operate a Cable System within the County; (2) transfer a Franchise or control of the Franchise or Franchisee; (3) renew a Franchise; or (4) modify a Franchise.

(f) "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, and public, educational, or governmental access channels.

(g) "Bulk Contract" means a contract to provide Cable Services to more than one household or unit.

(h) "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as those Acts may be amended.

(i) "Cable operator" means any Person who provides Cable Service over a Cable

System and directly or through one or more affiliates owns a significant interest in such Cable System, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

(j) "Cable Service" shall be defined as in the Cable Act, which currently defines "Cable Service" to mean the one way transmission of video or other programming services over a Cable System to Subscribers together with any Subscriber interaction, if any, that is required for the selection or use of such video programming or other programming services. Cable modem service shall be deemed a Cable Service if so defined under applicable federal law.

(k) "Cable System," "Cable Television System," or "System" shall be defined as in the Cable Act, which currently defines "Cable System" or "System" to mean a facility consisting of a set of closed transmission paths or other transmission lines and associated signal generation, reception and control equipment that is designed to provide Cable Service. The Cable System includes video programming and is provided to multiple Subscribers within the County. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves Subscribers without using any public rights-of-way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent it is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on demand services; (d) an open video System that complies with Section 653 of the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of "Cable System" shall not be deemed to circumscribe the lawful authority of the County to regulate the activities of any other communications system or provider of communications services, including, but not limited to, telephony and open video systems.

(l) "Communications Act" means the Communications Act of 1934, 47 U.S.C. § 151 et. seq., as that Act has been and may hereinafter be amended.

(m) "Communications Services Tax" means the tax imposed by the Communications Services Tax Simplification Act, Chapter 2000-260, Laws of Florida, as that Act has been and may hereinafter be amended.

(n) "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a Franchisee or Applicant, or the operation of a Franchisee's System, whether through operational control in whatever manner exercised or ownership of voting securities, or by contract.

(o) "County" means Clay County, Florida.

(p) "Fair market value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the Franchise itself.

(q) "FCC" means the Federal Communications Commission, or any successor governmental entity.

(r) "Franchise" means the nonexclusive right granted by the County to a Franchisee in a Franchise Agreement to construct, maintain and operate a Cable System under, on, and over Streets, roads and any other public ways, rights of way, or easements within the County. The term does not include any other Franchise or permit that may be required by this Ordinance or other laws, Ordinances or regulations of the County for the privilege of transacting and carrying on a business within the County or for disturbing or carrying out any work on any Street.

(s) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the County and a Franchisee that sets forth the terms and conditions under which the Franchise will be exercised.

(t) "Franchisee" means any Person granted a Franchise pursuant to this Chapter who has entered into a Franchise Agreement with the County.

(u) "Gross revenues" means, unless prohibited by applicable federal or state law, or as otherwise provided in a Franchise Agreement, all revenues recognized according to generally accepted accounting principles (GAAP) generated by the Franchisee from the operation of the Cable System to provide Cable Services in the unincorporated area of the County. Notwithstanding anything to the contrary in this paragraph, Gross revenues include, but are not limited to, fees charged Subscribers for basic service; fees charged Subscribers for any optional, premium, per channel or per program service; fees charged Subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change in service fees; leased access fees; and shall include the following services to the extent such services are considered Title VI services according to applicable law: revenue from Cable Service converters, Cable Service remotes, or any other Cable Service equipment rentals; revenues from cable guides; revenues from leases of Cable System; advertising revenues allocable to the County based on a percentage of Subscribers in the unincorporated area of the County divided by the Subscribers in the System (such percentage will then be multiplied by the total advertising revenue of the System to determine the allocable gross revenue stemming from advertising); and revenues from home shopping channels allocable to the County, provided that where certain home shopping channel revenue is allocable to more than one (1) Franchise area due to common zip codes, the Franchisee will allocate the percentage of revenue to the County which is equivalent to the percentage of Subscribers in the unincorporated area of the County divided by the total Subscribers for the allocable Franchise within the zip code. Unless prohibited by applicable law, gross revenues shall be the basis for computing the Franchise fee imposed pursuant to Section 21 hereof. Gross revenues shall not include revenues received from

programmers and used by Franchisee to market, promote or advertise a programming service; any revenue received by Franchisee for payment in connection with EG Access or facilities as required by Subsection 14; any taxes or fees on services furnished by the Franchisee which are imposed upon any Subscriber or user by the state, County or other governmental unit and collected by the Franchisee on behalf of the governmental unit and which the Franchisee passes on in full to the applicable authority. However, it is hereby expressly provided that Franchise fees shall be included in the calculation of gross revenues. Further, Franchise fees shall not be paid on Subscriber deposits unless and until such deposits are applied to a customer account for services rendered. As of the effective date of this Chapter, the provisions of this definition are preempted pursuant to the Communications Services Tax Simplification Act, Chapter 2000-260, Laws of Florida, and will remain preempted until such time as applicable law changes.

(v) "Institutional Network" means a communications system network, as described in a Franchise Agreement, which is constructed or operated by the Cable Operator for the non-commercial use of local government and which is generally not available to Subscribers.

(w) "Interconnection" means the electronic connection of two (2) or more Franchised Cable Systems solely for the purpose of sharing education and government access programming or transmissions.

(x) "Law" means all duly enacted and applicable federal, state and county laws, Ordinances, codes, rules, regulations and orders.

(y) "Leased access channel" means a channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. § 532, for commercial use by Persons unaffiliated with the Franchisee.

(z) "Overbuild" means a Cable System constructed to serve Subscribers in an area of the County already served by an existing Cable System.

(aa) "Person" means any individual, corporation, partnership or other legally recognized entity, but shall not include the County for the purpose of this Chapter and any Franchise granted thereto.

(bb) "Service tier" means a category of multi-channel Cable Service provided by a Franchisee and for which a separate charge is made by the Franchisee.

(cc) "State of the Art" shall mean that level of technical performance, equipment, components and services (without reference to the content of service) which has been developed and demonstrated to be generally accepted and used in the cable industry, excluding "tests" involving new products offered for one year or less. To qualify as "state of the art" a System must have a bandwidth of at minimum 750 MHz unless a waiver is otherwise granted by the County. Nothing in this Ordinance shall be

construed to require a Franchise to employ any specific transmission technology or to carry any particular programming services.

(dd) "Street or Streets" means the surface, the air space above the surface and the area below the surface of any public Street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right of way or public place, including public utility easements dedicated for compatible uses, or any other property in which the County holds any kind of property interest or over which the County exercises any type of lawful control, and any temporary or permanent fixtures or improvements as may be ordinarily necessary and pertinent to construct and operate a Cable System.

(ee) "Subscriber" means any Person who lawfully receives Cable Service delivered over the Cable System, except that any such Person who lawfully receives service but is not billed on an individual basis shall not be considered a Subscriber for the purposes of rate notification. Notice to County Administrator pursuant to this section shall be deemed adequate notice for all County service accounts provided at no charge.

(ff) "Subscriber base" means the total number of residential and commercial Subscribers within the unincorporated areas of the County. For purposes of calculating Subscribers under bulk or multi user contracts, the Franchisee shall count each individual unit (e.g., in a multiple family dwelling, a unit will be defined as each Subscriber unit within the structure) included within a contract as one Subscriber. Franchisee may use reasonable equivalency measures provided it uses such measures uniformly for all Franchise areas served by the System, and as provided for in a Franchise Agreement.

(gg) "Service Interruption" The term "service interruption" means the loss of picture or sound on one or more cable channels.

(hh) "Transfer of a Franchise" means any transaction in which (1) an ownership or control of a Franchisee or its Cable System is transferred from one (1) Person or group of Persons to another Person or group of Persons so that control of a Franchisee or a Franchisee's system is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another Person or group of Persons. A transfer is "pro forma" when it involves a transfer to a wholly owned or controlled affiliate or subsidiary of the Franchisee or Franchisee's parent entity and will not result in any change in the control or ultimate ownership of the Franchisee.

(ii) "Two way capability" means the incorporation into a Cable System of all appropriate design and engineering characteristics and features so that two way transmission, including addressability, over the System can be implemented and activated.

(kk) "Video channel or channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, including the associated audio signal.

### **Section 3. Grant of Non-Exclusive Franchise.**

(a) No Cable System may be operated or constructed within the unincorporated areas of the County without a Franchise granted by the County pursuant to this Ordinance and applicable law.

(b) The County herein sets forth the conditions for the initial grant, material modification, transfer or renewal of a nonexclusive right, privilege and Franchise to construct, operate and maintain a Cable System for the County and for its residents, the system to be located in, upon, along, across, over and under the Streets and roads and all extensions and additions thereto in the unincorporated area of the County in or on poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the County of a Cable System, for a period of not less than five (5) or more than fifteen (15) years commencing with the effective date of the Franchise issued pursuant to this Ordinance, subject to the rights, obligations, conditions and restrictions as hereinafter provided.

(c) A Franchisee shall, at all times during the term of its Franchise, be subject to all lawful exercise of the police power by the County. Franchisee shall comply with the terms and conditions of the Ordinance and all other applicable County Ordinances in effect at the time of the execution of the Franchise. If there is an inconsistency between the Ordinance and all other applicable County Ordinances, later amended, and the Franchise, the Franchise shall control unless otherwise allowed by applicable federal or state law.

(d) The right to use and occupy said Streets, alleys, public ways, and places for the purpose herein set forth shall not be exclusive. The County reserves the right to grant a similar use of said Street, alleys, public ways and places, to any Franchisee at any time on a non-discriminatory basis.

### **Section 4. Construction, system capability and operation.**

(a) The System. Unless otherwise provided in a Franchise Agreement, every System shall pass by every single-family dwelling unit and multiple-family dwelling unit in accord with line extension policies and density requirements set forth in this Ordinance unless prohibited by a private property owner.

(b) Drops to public buildings.

(1) Unless otherwise provided in a franchise agreement, every Franchisee

shall, at its own expense, install at least one (1) cable drop and one (1) outlet and shall provide basic and expanded basic cable service tiers or the digital equivalent thereto to all County facilities located within 125 feet of Franchisee's distribution plant, regardless of whether such facility is owned or leased, and which is identified by the County, and all public accredited K-12 schools and all School District administration buildings, where Franchisee's plant is the closest Franchised Cable System to the location. Franchisee shall provide such installations and services within forty-five (45) days of receiving a request from the County or the School District of Clay County. The location of such cable drops and outlets shall be determined in cooperation with the owner of the building and/or County official having oversight over such facility to which the connection is to be made. On request, Franchisee shall also provide additional drops or outlets on payment to Franchisee of its cost of time and material. Alternatively, the County or the School District of Clay County may add outlets at their own expense, provided such installation meets the Franchisee's standards.

(2) Cable service outlets, as described in this Section, shall not be utilized for commercial purposes. The County shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that may result in loss or damage to the System.

(c) Use of Franchisee's facilities. The County shall have the right to make attachments, without charge to the County, to unused space on or in a Franchisee's poles. A Franchisee may impose reasonable requirements on the County for such use, including a requirement that Franchisee provide necessary maintenance at the County's cost. If Franchisee notifies the County that a third party has need for the space occupied by the County, the County shall have the right to negotiate rental for continued use of such space on fair, reasonable, and non-discriminatory terms and conditions. If Franchisee notifies the County that Franchisee, itself, has need for the space occupied by the County, then the County will move its attachment. Such use by the County is limited to noncommercial, governmental or educational purposes. For the purposes of this Subsection, "governmental purposes" includes, but is not limited to, the use of the structures and installations for County public safety, traffic, utility, signal and information systems, but not for Cable System purposes in competition with Franchisee.

(d) Emergency requirements. Each Franchisee must provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system ("EAS") rules and consistent with any state or regional emergency alert system plans adopted in response to the FCC's EAS rules that are applicable to the County.

(e) A Franchisee, during the term of its Franchise, shall comply with all federal laws and regulations regarding programming and the carriage of local broadcast television stations.

(f) Any Cable System granted an initial Franchise, a renewal of a Franchise or a transfer of a Franchise shall agree to construct and maintain a state-of-the-art System.



A Franchisee shall maintain the System so as to provide a level of service equivalent to the highest level of service which is provided by the Franchisee or any System owned or controlled by the same parent as Franchisee to the City of Jacksonville, Florida or any other community within Clay County or an adjacent county. At minimum, any Cable System operating in the County pursuant to this Ordinance shall be constructed to provide a minimum capacity of 750 MHz or the equivalent thereto. Failure to comply with this Section shall result in the imposition of liquidated damages in the amount of One Thousand Dollars (\$1,000.00) per day or each part thereof that the violation continues. Notwithstanding the above, any cable system currently operating pursuant to a franchise whose term has not lapsed shall not be subject to the aforesaid obligation until the lawful expiration of the existing franchise unless otherwise provided in the franchise agreement or renewal thereof. A Franchisee may apply to the County for a waiver of the 750 MHz state-of-the-art standard for a portion of its Cable System or another of Franchisee's Cable System upon the demonstration to the County's satisfaction that Franchisee can and will provide substantially the same level and quality of cable-related services as would be available from a 750 MHz system within a reasonable period of time. County may grant or deny such waiver with such conditions as it may require in its reasonable discretion to ensure uniformity of service throughout the County.

(g) A Franchisee shall provide educational and governmental (EG) access channels as follows:

(1) A Franchisee shall provide without charge at minimum one (1) access channel that is dedicated exclusively to non-commercial (third party underwriting and sponsorship shall be considered non-commercial) Clay County educational and Clay County governmental programming. The access channel shall be used for programs consistent with the educational purposes of the School District of Clay County and the public community colleges located in Clay County, as well as governmental programming by the County, the content of which shall be coordinated and determined by the Board of County Commissioners or its designee. If the School District makes arrangements to install facilities from a School District site to a Franchisee's head end which permits the transmission of video signals for purposes of carriage on the access channels, the Franchisee shall permit the interconnection of these facilities with its System at its headend at no charge to the School District or the County. If the Franchisee makes "Cable in the Classroom" materials available to other schools served by the System, it will provide such materials to the schools it serves in Clay County.

(2) Upon request of the County and as set forth in a franchise agreement, a Franchisee shall provide additional access channels, based on the use of the original channel, not to exceed a total of three (3) channels. Upon request, within ninety (90) days, Franchisee shall be required to provide a second channel if the County can demonstrate that the first channel has been programmed for a minimum of eight hours per day for a minimum of six weeks prior to the request. Upon request, within ninety (90) days, franchisee shall provide a third channel when the second channel has been

programmed eight hours per day for six weeks. Should the third channel fail to maintain the required minimum number of hours of programming, Franchisee may, upon ninety (90) days notice reclaim the channel. In no event shall the County forfeit the first channel.

(3) The Franchisee which provides Cable Service to the Clay County Administration Building in Green Cove Springs, Florida, and to the School District Administration offices in Green Cove Springs, Florida, shall air the regular meetings of the Board of County Commissioners and its commission meetings or other meetings designated by the County and the Clay County School Board "live" until such time as the County directs otherwise, and the other cable providers in the County shall air video taped recordings supplied to them by the County, in a timely manner, or until interconnected.

(4) Notwithstanding anything to the contrary, franchisees operating adjacent systems within the County, owned or controlled by the same ultimate parent corporation shall, within one-hundred-twenty (120) days of receipt of a request by the County, interconnect systems for the purpose of sharing County education and government programming unless the Franchisee demonstrates to the County that it is economically and technically not feasible to interconnect. Such interconnection shall be at no cost to the County.

(5) All such EG access channels shall be available to all Subscribers as part of their basic Cable Service unless otherwise provided for in the Franchise. Franchisee shall transmit EG access channels so as to guarantee transmission and reception comparable to other channels carried on the Cable System's basic service tier.

(6) To ensure high quality service on the EG access channels, Franchisee shall ensure that the level of technical quality of its transmission of EG access channels is in conformance with FCC rules. Franchisee shall maintain written reports required by the FCC of such monitoring and make them available for inspection by the County, upon request. In the event that a complaint is made by a programmer of any EG access channels, the Franchisee shall immediately investigate and remedy any non-compliance.

(7) A Franchisee's failure to provide access channels as required herein shall result in the imposition of liquidated damages in the amount of Five Hundred Dollars (\$500.00) per channel per day for each day or part thereof the violation continues.

(h) Upon one-hundred and twenty (120) days notice, the County may require the Franchisee to interconnect its system with other cable operators for the purpose of carrying on each respective system and including in each channel line-up any EG access channels designated by the County unless the Franchisee demonstrates to the County that it is economically and technically not feasible to interconnect. Such interconnection shall be at no cost to the County.

- (i) The Cable System operator shall maintain equipment capable of providing standby power to operate its head end for a minimum of two (2) hours.
- (j) The Cable System shall be safely designed, constructed and operated and that the system's components be durable and reliable. Signal reception standards used in the operation of a system shall comply, at a minimum, with the technical and operational standards promulgated by the FCC relating to Cable Systems, as they may be amended from time to time, which regulations are expressly incorporated herein by reference.
- (k) Each Franchisee shall maintain its equipment and keep such records as required to comply with all applicable standards required by federal regulations and other applicable laws including but not limited to this Ordinance and any Franchise granted pursuant to this Ordinance. Each Franchisee shall upon request assist and cooperate with the County in explaining, interpreting and understanding such records.
- (l) Methods of construction, installation, operation, and maintenance of the Franchisee's Cable System shall comply with the National Electrical Safety Code, the National Electrical Code, and the Occupational Safety and Health Administration regulations, as well as all federal, state and county construction requirements, including FCC rules and regulations, all applicable building and zoning codes and all land use restrictions, as the same exist or may be amended hereafter. Tower locations within the County shall be in compliance with the County's land development regulations. Antenna structures used in the Cable System shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state law or regulation.
- (m) The objective of the County is to ensure that the System will deliver consistently good quality pictures to Subscriber terminals. The Cable System shall meet all performance criteria required by the FCC rules and regulations.
- (n) The Franchisee shall conduct, at its own expense, tests of the ability of the Cable System to meet the most current applicable technical guidelines and standards as prescribed by the FCC and shall be responsible for insuring full compliance of such standards. Annual proof-of-performance testing shall be done as required by the FCC, with the results of such testing and summary thereof available to the County upon written request. Those tests and measurements required by the FCC to ensure compliance with technical standards shall be performed in a manner that is consistent with the provisions of federal law, rules and regulations.

## **Section 5. Installation Standards for system.**

- (a) All permits for work in the County right of way shall be issued by the County Engineering Department. The County shall have the right to inspect all construction or

installation work performed by the Franchisee in the Streets, and to make such periodic inspections as it deems necessary to ensure compliance with the terms of its Franchise and other pertinent provisions of law, provided such inspection does not cause interference with the provision of cable service. The Franchisee shall repair all damage it causes to the right of way and restore all property to the same or better condition as it was in prior to Franchisee's work. All work in the County right of way shall be governed by the applicable provisions of the Code of Clay County and the Clay County Utility Installation guide in effect on the date hereof and as it may be lawfully amended.

(b) A Franchisee shall, at its expense, protect, support, temporarily disconnect or relocate in the same Street or other public place any of its property when required by reason of traffic conditions, public safety, Street closing, Street construction, change or establishment of Street grade, installation of sewers, drains, water pipes, power or signal lines owned by the County or any other utility provider in the County.

(c) Franchisee may obtain the lease of pole space and facilities from the existing utility pole owners. If the Franchisee is unable to obtain a lease on reasonable terms, Franchisee may install additional poles in an existing aerial route in the County's right of way. Franchisee must obtain the consent of the County which shall not be unreasonably withheld, to erect a pole in County right of way which is not part of an existing aerial utility system.

(d) All wires, conduits, cables and other property and facilities of the Franchisee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary traffic and travel upon the Streets and public places of the County. The Franchisee shall keep and maintain all of its property in good condition, order and repair. The Franchisee shall keep accurate maps of all its facilities located within the County right of way and make available for inspection copies of the maps which the County requests within thirty (30) days from the date of the request. The Franchisee shall not place poles or other equipment where they will interfere with the rights of property owners or with the pre-existing facilities of other utility providers unless otherwise allowed by law

(e) Nothing contained in this Section shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the Franchisee's facilities while performing work in a Street or public place.

(f) The County shall give the Franchisee reasonable notice of plans for Street improvements where paving or resurfacing of a permanent nature is involved. The notice shall describe the nature and character of the improvements, the Streets upon which the improvements are to be made, the extent of the improvements and the work schedule for the project. The notice shall give the Franchisee thirty (30) days as weather permits to make any additions, alterations or repairs to its facilities, so as to permit the Franchisee to maintain continuity of service. If the Franchisee shall fail, refuse or neglect to comply promptly within the thirty (30) day period, then upon

sufficient notice, the County may make the changes in the Franchisee's facilities at the Franchisee's cost and the County shall not be liable to the Franchisee for damages resulting from the removal, alterations or relocation or if the Franchisee's service is disconnected. All costs in connection therewith shall be paid by the Franchisee within thirty (30) days from receipt of the invoice therefore.

(g) The Franchisee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of the building. The expense of temporary removal, raising or lowering of wires shall be paid by the Person requesting it and the Franchisee may require payment in advance. The Franchisee shall be given not less than twenty (20) days' notice of a contemplated move to arrange for temporary wire changes.

(h) The use of the County's right of way and property by the Franchisee shall be deemed a license and shall be governed by the provisions of Sections 125.42 and 337.403, Florida Statutes, to the extent applicable. To that end, Franchisee shall, at Franchisee's expense, promptly repair any damage or injury to any road, right of way, or highway by reason of the exercise of the privileges granted by this Ordinance or its Franchise and such repair shall restore the road, right of way, or highway to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury. In the event of widening, repair, or reconstruction of any county road, or other governmentally owned or controlled property, the Franchisee shall move or remove its improvements and cable lines at no cost the County. The Franchisee shall prevent the creation of any obstructions or conditions which are or may become dangerous to the public.

(i) The Franchisee shall restore the ground where cable drop lines, cable trunk lines, or any other type of outside wiring that comprise the Franchisee's Cable System are installed to as good or better a condition as existed prior to installation. For private properties, such restoration shall occur as soon as reasonably practicable using best efforts within three (3) business days after connection to the Cable System. Except for the Franchisee's maintenance facilities, no cable drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground within the County for any period of time, except for the express purpose of being immediately connected to the Cable System of the Franchisee. The requirements of this Subsection shall apply to all installation, reinstallation, service or repair commenced by the Franchisee except in the case of emergencies or in the case of new construction where Franchisee shall take all reasonable actions to comply.

(j) Underground installation.

(1) In those areas within the County where all utilities and facilities are placed underground, all Cable System facilities shall remain or be located underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its Cable System facilities above ground, provided

that when all utilities and facilities are thereafter located underground, Franchisee shall likewise locate its Cable System facilities underground at no cost whatsoever to the County. However, upon request, the County shall provide the Franchisee with reasonable assistance to recover costs from a third party where so required by applicable law. Additionally, if aerial facilities are required to be moved underground by the County pursuant to a beautification or other public improvement project, the County will, upon request, assist a Franchisee in recovering the costs of relocation from any local, state or federal funds available for the project. Nothing contained in this Section shall require a Franchisee to construct, operate and maintain any ground-mounted appurtenances underground. Franchisee shall be in compliance with the Florida Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes, or may make separate provision for a program ensuring the timely and accurate location of its underground facilities.

(2) Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

(k) All construction and maintenance of Cable Systems shall be accomplished in the manner resulting in the least amount of damage and disruption to the rights-of-way which is reasonably practicable.

(l) The County reserves the right upon reasonable notice to conduct physical inspections of the Cable System and to require submission of all technical maps and reports including but not limited to FCC performance tests. A Franchisee will cooperate with the County or its designee in any such inspections.

## **Section 6. Service area and extension of service.**

(a) A Franchisee shall not discriminate in the build-out of its system or provision of service to individual or groups of residents on the basis of race, age, sex, national origin, marital status, color, religion, disability or economic condition. Unless the Franchise Agreement provides otherwise, every Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area that is not serviced by a franchised cable operator where the minimum density is at least twenty five (25) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Franchisee's distribution cable.

A Franchisee shall provide Cable Service to areas not meeting the above density and distance standards where benefited subscribers elect to pay an additional charge. A Franchisee may impose an additional charge on the benefited subscribers in excess of its regular installation charge for a service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials and pro rata per subscriber basis to be calculated on

that portion of the installation that exceeds the standards set forth above.

(b) In the event the termination of the distribution Systems of two (2) cable providers are both within the Franchise extension area referred to above, then the System which ends closer to the first dwelling unit to be served shall be required to extend its System in accord with Subsection (a) above. At no time may this provision or any provision of this Ordinance be interpreted to require a Franchisee to build in a service area already serviced by another franchised cable operator.

(c) Progress and status reports.

(1) Unless otherwise provided in the Franchise Agreement, within ninety (90) days of the effective date of the Franchise or as set forth in the Franchise Agreement, a Franchisee shall submit to the County its construction plan, indicating the timetable for construction, upgrade or rebuild of the various segments of the System.

(2) From the date of commencement of construction through the completion of the construction timetable, the Franchisee shall furnish the County with progress reports at three (3) month intervals, the first report to be made six (6) months from the date of issuance of the effective Franchise granted pursuant to this Ordinance. The reports shall indicate, in detail, the progress of construction, upgrade, or rebuild as applicable.

(e) Unless otherwise agreed to in the Franchise Agreement, for each day after thirty (30) days' delay in the construction schedule, the Franchisee shall be obligated to the County for liquidated damages in the amount of Five Hundred Fifty Dollars (\$550.00) for each day in addition to any other remedies provided herein. The assessment of liquidated damages shall be administered in accord with Section 17 of this Ordinance. However, the Franchisee shall not be responsible for failure to meet all or part of construction schedule deadlines under this agreement due to federal, state or county action, act of God, riot or other civil disturbance, or by any other cause, contingency or circumstance beyond its control which prevents or hinders the construction of the Cable System.

## **Section 7. Indemnity, Insurance and Bonds.**

(a) Indemnity. A Franchisee shall at its sole cost and expense, indemnify, protect and save harmless the County from any and all penalty, damage or charges arising out of claims, suits or causes of action made against it, or award of damages, whether compensatory or punitive, or expenses, including attorney's fees to defend and those on appeal, which arise therefrom, either at law or in equity, which are claimed now or in the future, including but not limited to any payments required by the workers' compensation law, which arise out of or are caused by the erection, location, maintenance, repair, installation, operation, replacement or removal of the Cable System within the County, provided that the County shall give the Franchisee written notice of its obligation to

indemnify the Franchising Authority within ten (10) business days of receipt of a claim or action by the grant, renewal, transfer or modification of the Franchise, or by an act of the Franchisee, its agents or employees.

(b) Insurance. At the time the Franchise Agreement is executed and at all times during the term of the Franchise, the Franchisee shall maintain a comprehensive general liability policy issued by a company authorized to do business in Florida, of not less than One Million Dollars (\$1,000,000.00) for each occurrence; One Hundred Thousand Dollars (\$100,000.00) for fire damage (any one fire); One Million Dollars (\$1,000,000.00) for personal and advertising injury; Two Million Dollars (\$2,000,000.00) general aggregate; and Two Million Dollars (\$2,000,000.00) for products and completed operations; as well as automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000.00). All insurance required hereby shall include the County as an additional named insured party and a certificate indicating the same shall be delivered to the County at the time the Franchise Agreement is executed.

(c) Workers Compensation. The Franchisee shall also maintain in full force and effect throughout the duration of the Franchise sufficient worker's compensation insurance coverage with statutory limits, and shall deliver a certificate evidencing same to the Clay County Risk Manager.

(d) Surety Bond. At the time of execution of the Franchise Agreement, the Franchisee shall post with the County a surety bond, acceptable to the County Attorney's Office, or, in lieu thereof, cash or securities, as surety for the faithful performance and discharge by it of all the obligations imposed by this Ordinance from the date thereof. The bond shall remain in force and effect throughout the life of the Franchise. The rights reserved to the County with respect to the surety bond are in addition to all other rights of the County, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to the bond shall affect any other right the County may have. The amount of the bond shall be set forth in the Franchise Agreement.

(e) Construction Bond.

(1) The Franchisee shall, within thirty (30) business days after the effective date of a Franchise granted under this Ordinance, post with the County a construction bond or letter of credit as provided in a Franchise Agreement. Said bond or letter of credit may be returned at the end of twelve (12) months after the System has been completed and approved by the County provided that the Franchisee has complied with all terms and conditions of the Franchise Agreement and all provisions of this Ordinance as well as the rules and regulations herein required and permitted.

(2) If the Franchisee shall fail to perform the obligations heretofore set out in this Section, the Franchisee shall forfeit to the County the hereinabove referenced construction bond or letter of credit in the amount of all expenses incurred by the



County to complete the construction, repair damages and to pay all costs and expenses related thereto caused by construction which a Franchisee has refused or failed to repair following reasonable prior written notice.

## **Section 8. Renewal of Franchise.**

(a) A renewal of a Franchise shall be conducted in accord with the provisions of federal law governing same (47 U.S.C. Section 546). During the six month period which begins with the thirty-sixth month before the Franchise expiration, the County may, on its own initiative, and shall, at the Franchisee's request, commence ascertainment proceedings for the purpose of:

(1) Identifying the future cable-related community needs and interests;

(2) Reviewing the Franchisee's performance under the Franchise Agreement during the then current Franchise term.

(b) Upon completion of the ascertainment proceedings under Subsection (a) of this Section, the Franchisee may, on its own initiative or at the County's request, submit a proposal for renewal. Subject to federal law (47 U.S.C. Section 544), any such proposal shall contain such material as the County may require, including proposals for an upgrade of the system. The County may establish a date by which such proposal shall be submitted, which date shall be no earlier than thirty (30) days following the date of the request for proposal.

(c) Upon submission of a proposal, the County shall provide prompt public notice of the proposal and, within four months of the date of submission of a proposal pursuant to Subsection (b), either renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed. In the event that the County determines that the Franchise should not be renewed, the County shall, at the request of the Franchisee or on its own initiative and after providing prompt public notice thereof, commence an administrative hearing to determine whether:

(1) The Franchisee has substantially complied with the material terms of the existing Franchise and with applicable law;

(2) The quality of the Franchisee's service, including signal quality, response to consumer complaints, and billing practices but without regard to the mix, quality, or level of cable services, provided over the system has been reasonable in light of community needs;

(3) The Franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in the Franchisee's proposal; and

(4) The Franchisee's proposal is reasonable to meet the future cable related

community needs and interests, taking into account the cost of meeting such needs and interests.

(d) In any renewal proceeding, the Franchisee shall be afforded adequate notice and the Franchisee and the County, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

(e) At the conclusion of a proceeding under this Section, the County shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and provide a copy to the Franchisee. Such decision shall state the reasons, therefor.

(f) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in Subsection (c) of this Section. Pursuant to the record of the proceeding under Subsection (c) of this Section, the County may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under Subsection (c)(1) of this Section or on events considered under Subsection (c)(2) of this Section unless the County has provided the Franchisee notice and the opportunity to cure, or in any case in which the County has waived its right to object, or has effectively acquiesced.

(g) (1) Any Franchisee whose proposal for renewal has been denied by a final decision of the County made pursuant to this section, or has been adversely affected by a failure of the County to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of Section 635 of the Cable Act (47 U.S.C. 555).

(2) The court shall grant appropriate relief if the court finds that –

(i) any action of the County other than harmless error, is not in compliance with the procedural requirements of this section; or

(ii) in the event of a final decision of the County denying the renewal proposal, the Franchisee has demonstrated that the adverse finding of the County with respect to each of the factors described in subparagraphs (1) through (4) of subsection (c) which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c).

(h) Any decision of the County on a proposal for renewal shall not be considered final unless all administrative review by the state has occurred or the opportunity therefore has lapsed.

(i) For purposes of this section, the “franchise expiration” means the date of the expiration of the term of the franchise, as provided under the franchise.

(j) Notwithstanding the provisions of this Section, the Franchisee may submit a proposal for the renewal of Franchise, and the County may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal on an informal basis at any time (including after proceedings pursuant to this Section have commenced). The denial of a renewal pursuant to this Subsection shall not affect action on a renewal proposal that is submitted in accordance with Subsections (a) through (f) of this Section.

(k) Upon either a final determination of non-renewal or lawful revocation of a Franchise, the County shall have discretion to permit a Franchisee by mutual consent to continue to operate the Cable System for an extended period of time agreed upon by the parties. Any such operation of the system, by the Franchisee shall be in accordance with the terms and conditions of this Ordinance and the applicable Franchise Agreement, and shall provide the regular Subscriber service and any and all of the services that may be provided at that time.

(l) A renewal agreement shall contain, at a minimum, the information required in Subsection 12(i) of this Ordinance, including a construction schedule for any upgrades, rebuilds or extensions of the Cable System which may be required, as applicable.

## **Section 9. Rights reserved to County.**

Without limitation upon the rights which the County might otherwise have, the County does hereby expressly reserve the following rights, powers and authorities:

(a) To exercise its governmental powers now or hereafter to the full extent that these powers may be vested in or granted to the County and to the fullest extent not otherwise prohibited by law.

(b) To grant additional Franchises within the County to other persons for the conduct of Cable Services.

(c) To exercise any other rights, powers or duties required or authorized to the County under the State Constitution or the County Charter.

(d) Prior to granting a Franchise or a renewal of a Franchise, the Board of County Commissioners may modify any requirement imposed by this Ordinance if to do so is in the best interests of the health, safety, and welfare of the citizens of Clay County, Florida, and consistent with applicable non-discrimination requirements.

## **Section 10. Notices.**

Every direction, notice or order to be served upon the Franchisee shall be sent by certified mail return receipt requested to its designated office, as listed in the Franchise Agreement. Every notice to be served upon the County shall be sent by certified mail return receipt requested to the County Manager, Post Office Box 1366, Green Cove Springs, Florida, 32043.

#### **Section 11. Transfers, successors and assigns.**

All the provisions of this chapter shall apply to a Franchisee and its' successors, whether by merger, sale or any other transfer, as they may be approved by the County in accordance with this Ordinance. For the purpose of determining whether it shall consent to such transfer, the County may inquire into the public interest qualifications of the prospective transferee, including, but not limited to, the legal, financial and technical qualifications. No such transfer shall be effected without prior County approval, which approval shall not be unreasonably withheld. The Franchisee shall not transfer the Franchise to another person or corporation, nor shall a transfer which causes a transfer of actual working control of the Franchisee or any parent organization of the Franchisee, take place without prior approval of the Board of County Commissioners, which approval shall not be unreasonably withheld.

#### **Section 12. Application criteria, qualifications, procedures.**

(a) No grant of an initial Franchise, or transfer of a Franchise shall be approved, until the following minimum conditions are satisfied:

(1) The applicant has submitted an application in accordance with this Ordinance;

(2) A duly advertised administrative hearing has been held by the Board of County Commissioners on the application in accordance with this Ordinance;

(3) The Board of County Commissioners has made the written findings required in Subsection 13(e);

(b) The applicant shall present character qualifications, as follows:

(1) Applicants shall present evidence as to whether or not the applicant or any principal has ever been charged or convicted, pled guilty or nolo contendere, in a criminal proceeding;

(2) Evidence shall be presented as to whether the applicant or any principal has ever been a party to a civil proceeding in which it was held there were unfair or anticompetitive business practices; antitrust violations; violations of securities laws; or false or misleading advertising;

(3) Evidence shall be presented as to whether applicant has ever had a business license (including FCC licenses) revoked; and

(4) The County may waive any character defect in its discretion on a showing of adequate mitigation.

(c) Unless prohibited by law, each application for an initial Franchise or a transfer shall be accompanied by a filing fee in the amount of fifteen thousand dollars. This fee shall be used to pay the costs of processing the application.

(d) The applicant shall file ten (10) copies of the application for the cable Franchise with the County. The applications shall be reviewed by the County and the applicant afforded proper time during a public hearing before the Board of County Commissioners of Clay County to explain its application. The County shall, by resolution, approve an applicant and authorize the County's entrance into a Franchise for provision of cable service if the applicant satisfies the criteria established herein. The application shall be executed and verified under oath and contain, at minimum, the following:

(1) For a transfer of a Franchise it shall contain competent evidence showing the facts or conditions identified in Subsections (2)(i) through (2)(viii) below; and

(2) For an initial Franchise, it shall contain competent evidence showing the following facts or conditions:

(i) Applicant. Name, business address, business telephone number, and contact person of the applicant.

(ii) Principals, officers, and related entities. The names, addresses, business telephone numbers, and offices or employment positions of:

(a) All principals and officers of the applicant;

(b) All persons having a controlling interest in or holding more than fifteen percent (15%) of the outstanding ownership interest of the applicant;

(c) All parent, subsidiary, and affiliate entities of the applicant;  
and

(d) Applicant's employment practices and policies.

(iii) Status of applicant. That the applicant is a United States citizen or is a legal entity that is organized, existing, and in good standing under the laws of the United States and is authorized under Florida law to transact business in Florida.

(iv) Registration statement. That the applicant has filed a registration

statement with the FCC, pursuant to federal law, if required, or a Form 394 with the FCC, if a transfer.

(v) Financial qualifications. Evidence that the applicant has the financial ability to construct and operate the proposed Cable System which shall include:

(a) Detailed financial statements of the Applicant (including balance sheets and income statements for the preceding three fiscal years, if available); and

(b) Financial forecasts or projections (including the disclosure of the underlying assumptions of the applicant) related to the construction and operation of the proposed Cable System.

(vi) Background experience of the applicant. A descriptive listing of:

(a) The applicant's and or its related entities' experience or listing as a cable operator; and

(b) The status of those Franchises applied for which were not granted giving the reason they were not granted.

(vii) Proposed Cable System. A complete and detailed description of the Cable System proposed by the applicant, including technical plans, operational system description, construction schedule for initial service, initial subscription rates, financing, and profit and loss projection for the operation of the proposed Cable System during the first five (5) years of the term of the Franchise. The description shall include per strand mile densities of the area where the applicant proposes to initially provide Cable Service and the extent to which the applicant intends to utilize bulk rate contracts, the extent to which the applicant intends to provide Cable Service to areas currently being serviced by existing Cable Systems, and the estimated number of Subscribers to be served.

(viii) Applicant's basic assumptions. A complete and detailed list of all basic assumptions of the applicant related to the design, construction, and commercial operation of the proposed Cable System, including, but not limited to, identification of the area to be served, time required for activation of system, interconnection with other cable operators.

(e) Prior to the County approving or authorizing a transfer or granting an initial Franchise, the County shall hold an administrative hearing on the application.

(1) Public notice of the hearing shall be given to the citizens of the County by publication of a notice of the hearing in a newspaper of general circulation in the County twice, with the first publication to be at least ten (10) days prior to the date of the

hearing.

(2) At the administrative hearing competent substantial evidence shall be adduced to prove or satisfy the mandatory selection criteria prescribed in Subsection (3) below.

(3) In evaluating an application for a transfer of a Franchise, the Board of County Commissioners shall consider the criteria set forth in Subsections (3)(i), (v) and (vi) below. In evaluating an application for an initial Franchise, the County shall consider the following mandatory criteria:

(i) That the application adequately contains the information required by and otherwise complies with this Ordinance;

(ii) The capacity of public easements or rights-of-way to accommodate the proposed Cable System;

(iii) The present and future use of the public easements or rights-of-way to be used by the proposed Cable System;

(iv) The potential for disruption of existing users of the public easements or rights-of-way by the proposed Cable System and the resultant inconvenience which may occur to the public as a result of such disruption;

(v) The financial, legal and technical ability of the applicant to perform its duties under the Franchise and applicable federal and state law;

(vi) That public access to cable service in the area to be served by the Cable System will not be denied to any group of potential residential cable Subscribers because of the income of the residents of the local area in which the group resides.

(4) The consideration of these criteria shall not preclude the Board of County Commissioners from considering other criteria which the Board of County Commissioners may deem relevant, including, but not limited to, the matters contained in the application.

(5) An initial Franchise will be granted subject to evidence of sufficient equity and loan funds to finance and construct the Cable System or upgrade, begin operations and operate the system for the duration of the Franchise term.

(f) Based on the competent substantial evidence adduced at the administrative hearing, the Board of County Commissioners shall, within thirty (30) days from the closing of the hearing, issue a resolution (i.e., a written decision, in the form of a resolution):

(1) Granting or denying the application;

(2) A copy of the resolution shall be immediately transmitted to the applicant and to any Person who participated in the administrative hearing and who had requested a copy of the decision.

(g) The County may retain and employ consultants who are knowledgeable in the cable industry to assist the County in analyzing the application for an initial Franchise or transfer, in making recommendations to the County regarding the relief requested in the application and testifying, if necessary, at the administrative hearing required in this Section. Unless prohibited by applicable law, upon request of the County, the applicant shall promptly pay the reasonable cost for such consulting services. Unless prohibited by applicable law, the County Manager, in his sole discretion, may at any time during the receipt or evaluation of an application require an applicant to deposit with the County security, in the form of cash or cash equivalent, in an amount not to exceed Fifty Thousand Dollars (\$50,000.00), to secure the payment of the reasonable costs for such consulting services.

(h) Within thirty (30) days from the effective date of any resolution approving the grant of an initial Franchise, the applicant shall execute a Franchise Agreement, as appropriate, pursuant to and subject to the provisions of this Ordinance. This Franchise Agreement shall, at a minimum, contain the following:

(1) The term of the Franchise granted;

(2) A construction schedule for new infrastructure and notification procedure with the County, public utilities, and other Cable System operators, if applicable;

(3) The date on which the system shall become operational;

(4) The requirements or method for access by the County to the applicant's accounting and financial and statistical records for periodic reports to the County, if Franchise fees are paid directly to the County;

(5) The prohibition of the transfer of the Franchise or any right, title, or interest under it without prior approval of the County, or in violation of this Ordinance or federal law;

(6) The events of default and remedies for such defaults;

(7) The requirement that the applicant indemnify and hold harmless the County, the Board of County Commissioners and its officers, employees and agents for injuries or damages which arise out of the Franchisee's construction, operation or installation of a Cable System or the grant of the Franchise; provided, however, that Franchisee shall not indemnify the County for damages arising out of the County's own



intentional misconduct or negligence. The Franchise Agreement shall also require the Franchisee to notify the County Manager of any claim against the County within ten (10) days of knowledge of a claim;

(8) The requirement that the applicant provide evidence of general liability and workers' compensation insurance;

(9) The requirement that the applicant post with the County a surety bond or some other comparable security instrument, in an amount authorized under this Ordinance to secure performance of the applicant's obligations under the Franchise (including, without limitation, the indemnification provisions of the Franchise);

(10) The requirement that the applicant post with the County a construction bond in compliance with this Ordinance.

(11) The requirement that the applicant comply with applicable federal and state law and regulations with respect to the protection of Subscriber privacy, customer service standards, technical standards and any other requirements of this Ordinance and the Franchise Agreement;

(12) Establish the method for access by the County of the applicant's operational records for requested reports to the County;

(i) The resolution of the Board of County Commissioners approving the application, the Franchise Agreement, and this Ordinance, shall constitute the entire agreement between the County and the Franchisee and shall not be subject to modification, except as specifically provided herein.

### **Section 13. Modification of Franchise.**

A Franchisee, may, at any time during the term of the Franchise, submit to the County a proposal seeking modification of the Franchise Agreement. The application for a modification shall be administered in accord with 47 U.S.C. Section 545, as the same may be amended from time to time.

### **Section 14. Provision of additional services within the County.**

The Franchise Agreement will provide the timing and the provision to the County, for any additional services during the term of the Franchise which may include but not be limited to promotion of County, Community College or School District produced local programming, personnel to assist with the production and cablecasting of regular meetings of the Board of County Commissioners and all others so designated and the Clay County School Board, additional education and government access channels, production equipment and capital grants.

**Section 15. Parental Control/Lockout Devices.**

(a) It is the declared public policy of the County that each person's home is a place of refuge and privacy subject to the unique control of the homeowner and the occupants and that these values are especially important as they pertain to the parenting of children and the supervision of children. Franchisee shall comply with the requirements of 47 U.S.C. 544(d) as well as the terms of this Ordinance regarding parental control devices.

(b) Each and every Franchise granted pursuant to this Ordinance shall require a Franchisee to provide a parental control device to each and every Subscriber requesting such device for use as part of his or her cable subscription and shall provide assistance, if requested by the Subscriber, on the use of parental control devices. A parental control device enables the adult user to prohibit viewing of a particular channel during periods selected by the user and may be a function of a converter.

(c) A Franchisee upon request shall inform, potential Subscribers, renewing Subscribers and other interested persons, in writing, about the available option to obtain a parental control device, the rates and terms for such devices and reasonable and clear information with regard to use of such devices. The Franchisee shall install a parental control device within thirty (30) days after receiving an order for such device from a Subscriber. The parental control devices to be made available by the Franchisee shall be reliable and available at a reasonable and affordable price to the vast majority of Subscribers to a Cable System in the County. The Franchisee may require a reasonable security deposit for the use of such a device by a Subscriber.

**Section 16. Customer service standards.**

(a) Purpose. This Section provides customer service practices that a Franchisee must satisfy in the operation of Cable Systems. A Franchisee shall also adhere to any additional or more restrictive requirements established by FCC regulations or other applicable federal, state or local laws, rules or regulations. Franchisee shall keep written records and documents as described below and in the Franchise Agreement, as necessary to enable the County to assess whether the Franchisee is in compliance with this Ordinance and other applicable laws.

(b) Ombudsman. Franchisee shall designate a senior level employee responsible for working with the County to address problems that may arise under the Franchise and shall serve as Franchisee's ombudsman to the County and Subscribers. The purpose of this service is to provide the County with direct access to supervisory level personnel with the authority to promptly act on customer service complaints referred by the County to Franchisee. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues. This service shall, at a minimum, include the following:

(1) The personnel providing the service shall have sufficient authority and access to Franchisee's facilities and personnel in order to investigate and take appropriate remedial action without delay;

(2) The County shall be given, upon request, a list of key personnel and their business telephone numbers to use that will generally, during normal business hours (9:00am to 5:00pm, Monday through Friday), be answered by a live person and will provide immediate access to a person having the authority specified in Subsection (b);

(3) Franchisee shall provide the County with a telephone number or beeper to access personnel in case of an emergency, twenty four (24) hours a day, three hundred sixty five (365) days a year. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues.

(4) Franchisee shall investigate, attempt to contact the Subscriber, and respond to each call, facsimile or written complaint or request made or referred by the County prior to 5:00 p.m., the next business day, and shall provide a written report to the County within seven (7) days; and

(5) Franchisee shall provide the County with written notice of changes in the key contact personnel or material changes in procedures involved in providing this service.

(c) Office hours; telephone availability and conduct.

(1) The Franchisee shall maintain at least one (1) conveniently located service and payment branch within the County. The service and payment branch shall be open at minimum during normal business hours, 9:00am to 5:00pm, Monday through Friday, and some weekend and/or evening hours. Further, Franchisee shall locate, construct, design, staff, operate and maintain said branch(es) so as to provide all Subscribers, including but not limited to those Subscribers who may be elderly, disabled or otherwise impaired, with access to its branch. The branch shall make available for all customers (i) parking within reasonable proximity of the office and (ii) sufficient covered waiting areas and adequate seating capacity. All offices must have adequate counter personnel to keep wait time to a reasonable length. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues. Notwithstanding the above, a grantee shall not be required to provide a service office in the County until the grantee has in excess of three thousand (3000) subscribers within the County.

(2) Franchisee shall maintain a listed local, toll-free telephone number under the business name familiar to Subscribers and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by

Subscribers and members of the public to contact the Franchisee on a full time basis, twenty four (24) hours per day, seven (7) days per week, including holidays. Knowledgeable, qualified Franchisee representatives will be available to respond to customer telephone inquiries, twenty four (24) hours per day, seven (7) days per week, including holidays. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues.

(3) Franchisee shall adhere to all customer services standards required by federal law as well as those outlined below. Franchisee's material failure to comply with this Section (c)(3) may result in a fine in the amount of Two Hundred Fifty Dollars (\$250.00) per day, or part thereof, that the violation continues.

(i) After normal business hours, the access line may be answered by an answering service or an automated response system, which includes the use of an answering machine. Inquires received after normal business hours shall be responded to by a trained company representative during the next business day.

(iii) The County may require in a Franchise Agreement that, upon written notice, a Franchisee shall acquire equipment and perform surveys to measure compliance with the telephone answering standards set forth herein or promulgated by the FCC.

(iv) Actions of the Franchisee which lead to a high volume of calls, including but not limited to incorrect bills, rate increases, late bills or fees, changes in service, Cable System maintenance, and missed appointments are considered Normal Operating Conditions and are therefore not exempt from compliance with this Section.

(v) All employees of the Franchisee must provide their name when answering an incoming call or inquiry or when working in the field, and must provide their company identification number if requested by a customer. If Franchisee does not utilize an identification numbering system for employees, then all employees shall provide their first names if requested by a customer. Supervisory personnel shall use their best efforts to respond to customer requests to speak with a "Manager or supervisor" within two (2) hours of the request under Normal Operating Conditions, during normal business hours and, in all instances, supervisory personnel will respond no later than the close of the next business day.

(d) Holidays. The Franchisee shall prepare and distribute to the County Manager a calendar of legal holidays and business days on which the Franchisee will be closed. Franchisee shall also provide voice message and notification on its premises of the emergency and after hours contact numbers if different from the normal contact number.

(e) Installations; service interruptions; service calls.

(1) Nothing in this Section shall limit the right of Franchisee to deny service to any household or individual having a negative credit or service history with Franchisee.

(2) Under Normal Operating Conditions, telephone answer time by a trained company representative, including wait time, shall not exceed thirty (30) seconds from the moment the connection is made. If the call must be placed on hold or transferred, the time for response by a trained company representative shall not exceed an additional thirty seconds. Under Normal Operating Conditions, the customer shall receive a busy signal less than three percent of the time. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis. With respect to such standards that are measured on a quarterly basis, the fines for such violations shall be assessed on a quarterly basis as follows: Ten Thousand Dollars (\$10,000) per quarter if the Franchisee falls below such standards by ten percent (10%) or less; Fifteen Thousand Dollars (\$15,000) per quarter if the Franchisee falls below such standards by twenty percent (20%) or less; and Twenty Thousand Dollars (\$20,000) per quarter if the Franchisee falls below such standards by twenty five percent (25%) or more. For example, if Franchisee has answered the telephone standards set forth in Subsection on a quarterly basis seventy five percent (75%) of the time, instead of the ninety percent (90%) required herein, the quarterly fine shall be Fifteen Thousand Dollars (\$15,000).

(3) Under Normal Operating Conditions, each of the following seven (7) standards must be met no less than ninety five percent (95%) of the time, measured on a quarterly basis.

(i) Standard installations shall be performed within seven (7) business days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty five (125) feet from the existing distribution System. If scheduled installation is not started as scheduled, the Subscriber will be telephoned by an employee or designee of the Franchisee the same day. If customer is not reached on day of install, Franchisee will follow up with customer to reschedule as necessary in a timely manner. Franchisee shall not cancel a scheduled appointment following the close of business of the prior business day. Franchisee will use its best efforts to ensure that the cable home wiring in the building interiors shall be as unobtrusive as possible and that outlets shall be located for the convenience of the Subscriber.

(ii) Requests for standard additional outlets, service upgrades, service downgrade billing or other connections separate from the initial installation shall be performed within seven (7) business days after an order has been placed.

(iv) Excluding conditions beyond the control of the Franchisee, Franchisee shall begin working on service interruptions promptly and in no event later than twenty four (24) hours after the interruption becomes known regardless of whether or not Franchisee caused the interruption. Franchisee shall always have on call sufficient technical staff to respond to significant outages on a twenty four (24) hour a day, seven (7) day a week basis. The Franchisee must begin actions to correct other service problems no later than the next business day after notification of the problem. Repairs shall ordinarily be completed within seventy two (72) hours of the initial service request and normal operating conditions shall be restored. If for reasons beyond the Franchisee's control, a longer time for the completion of such repairs is necessitated, the Franchisee shall exercise due diligence and effort to complete the work in the most expeditious manner possible. The lack of trained technicians or lack of appropriate common replacement parts on hand as standard in the industry shall not constitute a condition beyond the Franchisee's control.

(v) The "appointment window" alternatives for installations, service calls, and other installation activities shall be either a specific time or, at maximum, within a four (4) hour time block during normal business hours or at the election and discretion of the customer, "all day". "Normal Business Hours" shall be defined as in 47 C.F.R. §76.309(4)(i). Nothing herein precludes the Franchisee from scheduling service calls and other installation activities outside of normal business hours for the convenience of the customer. If Franchisee's company's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, company's representative shall make all reasonable effort to contact the customer and reschedule the appointment to a time that is convenient for the customer.

(vi) Franchisee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment or on the same day as the scheduled appointment. Should Franchisee not meet this requirement, then Subscriber shall be notified of options afforded in Subsection (e)(4).

(4) Upon an individual Subscriber's request, the Franchisee shall provide the Subscriber with a pro-rata credit of the customer's monthly bill for interruptions based upon the length of the service interruption. A Subscriber is entitled to a refund for any service interruption during a pay-per-view event ordered by Subscriber. Such credit shall be applied to the account of the requesting Subscriber within thirty (30) days after Franchisee receives a written or oral request from any Subscriber. At its option, Franchisee may provide the requesting Subscriber with additional compensation, credits or services.

(5) When a missed appointment by Franchisee was not due to the fault of the Subscriber, Franchisee shall provide to the Subscriber:

(i) If the appointment was for an installation or service call in which a fee was to be charged, the installation (not exceeding two (2) outlets) or service call

shall be performed free of charge;

(ii) If the appointment was for an installation or service call that was to have been provided free of charge, Subscriber shall receive a credit of not less than Twenty Dollars (\$20.00);

(6) All representatives of Franchisee, including contracted employees of the Franchisee, must wear a conspicuous photo-identification badge clearly visible to the public indicating employment by Franchisee or its contractor. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Fifty Dollars (\$250.00) per day, or part thereof, that the violation continues.

(7) Any vehicle used for the installation, construction, maintenance or repair of a Cable System shall bear the identification of the Franchisee or Franchisee's contractor in a conspicuous place and manner on the vehicle.

(8) In all situations where cable service is disrupted to ten percent (10%) or more Subscribers in the County for more than four (4) hours between the hours of 6:00am and 12:00am, Franchisee shall immediately notify the County Manager or his designee by telephone during normal business hours, and provide a report of the disruption including the cause and anticipated time of completion of the repair. Upon request, Franchisee shall follow up and send to the County a written report within seven (7) days of the disruption containing information relating to the cause and the time of completion of repair and restoration of service.

(9) Franchisee may intentionally temporarily interrupt service only for good cause for the shortest time possible, including interruption for system upgrade, maintenance and repair. Wherever possible, routine maintenance requiring service interruptions shall occur at times that affect the fewest number of Subscribers, preferably between the hours of 12:00 midnight and 6:00am. Wherever possible, the Franchisee shall post on screen announcements on appropriate system channels and may make use of local advertising on programming channels to advise Subscribers in advance of planned construction or maintenance that will cause or is likely to cause service interruptions. Planned interruptions not requiring more than six hours of interrupted service and occurring between the hours of 12:00 midnight and 6:00am shall not require such notice to Subscribers. To the extent that specific identifiable neighborhoods will be affected by a planned outage, the Franchisee shall provide at least three (3) days advance notice through telephone calls, door hangers or other reasonable means like on screen announcements to effectively notify Subscribers. Franchisee shall maintain a written log or electronic database available to the County upon request of all such service interruptions. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Five Hundred Dollars (\$500.00) per day, or part thereof, that the violation continues.

(f) Communications between Franchisee and Subscribers.

(1) Notifications to Subscribers. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues.

(i) A Franchisee shall provide the following written information at the time of installation of service, annually to all Subscribers and at any time upon request.

- a. Products and services offered;
- b. Prices and options for programming services and conditions of subscription to programming and other services;
- c. Installation and service maintenance policies;
- d. Instructions on how to use the cable service;
- e. Channel positions of programming carried on the system;
- f. Franchisee's procedures for the receipt and resolution of customer complaints, including address and toll-free telephone number to which complaints may be reported, and the hours of operation of Franchisee;
- g. Franchisee's information on collection and disclosure policies for the protection of a Subscribers privacy rights as required by applicable state and federal law;
- h. The amount and criteria for any required deposit and the manner in which such deposit will be refunded (at time of installation only).
- i. The availability of parental control/"lock out" devices.
- j. Franchisee's policy and practices for collection and disclosure of Subscriber information for the protection of the privacy of the Subscriber as required by applicable state or federal law.

(ii) At the time a customer places an order, the Franchisee shall take appropriate steps to ensure, in response to inquiries, that price terms are clearly and accurately disclosed to potential customers before any order is accepted.

(iii)

(iii). Franchisee shall maintain a separate file, open for public inspection, at its main office containing all notices provided to Subscribers pursuant to these customer service standards and all promotional offers made to Subscribers. The notices and offers shall be maintained in a file for at least one (1) year from the date of such notice



or promotional offer.

(2) Billing.

(i) Bills shall contain all information required by FCC rules and regulations. Franchisee's material failure to comply with this Section (f)(2)(i) may result in a fine in the amount of One Hundred Fifty Dollars (\$150.00) per day, or part thereof, that the violation continues.

(ii) To the extent a Franchisee's billing System allows, each Franchisee shall provide written notice in its monthly billing, at the request of the County, of any County meeting: (i) regarding requests or Applications by the Franchisee for (ii) renewal, (iii) transfer or (iv) modification of its license or (v) change in service, rates or charges to Subscribers unless such written notification takes place by separate mailing or other means. The County shall make such a request in writing, no less than sixty (60) days prior to the mailing of any billing by Franchisee such that Franchisee's regular billing cycle shall not be interrupted. If said notices are no longer than six lines, 47 characters per line, then there shall be no expense to the County. If the notice is longer, County agrees to pay the incremental expense for the cost of a bill stuffer and added postage. Franchisee will fully cooperate and assist County in determining wording and costs associated with notice. Franchisee bills will be clear, concise and understandable. Franchisee's material failure to comply with this Section (f)(2)(ii) may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues.

(iii) A Franchisee is encouraged to develop other methods of payment such as electronic transfer of funds via the telephone or internet or through automatic deduction.

(iv) In the case of a billing dispute or inquiry by a Subscriber, a Franchisee shall respond to a written complaint from a Subscriber within thirty (30) days. A Subscriber shall not be charged a late fee in connection with any amount in dispute which is resolved in the Subscribers favor. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

(v) The first billing statement of the Franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.

(vi) The billing statement of the Franchisee must be fully itemized, with itemizations including, but not limited to tier of service charges and equipment charges. Invoices will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Fifty Dollars (\$150.00) per day, or part thereof, that the violation continues.

(vii) The billing statement of the Franchisee must show a specific due date not earlier than ten (10) days after the date of the beginning of the service period. Any balance not received within ten (10) days after the due date may be assessed an administrative charge. The charge will appear on the billing statement of the following month.

(ix) Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

(x) The Franchisee must notify the Subscriber that payment can be remitted in person at any of the branches serving the County and inform the Subscriber of the address of the branches where payment can be made.

(xi) A Franchisee shall provide Subscribers and the County Manager with at least thirty (30) days advance written notice of any changes in rates, charges, channel lineup (except additions), or discontinuations or changes of service or services offered over the Cable System whenever practicable. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

(3) Refunds. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Fifty Dollars (\$150.00) per day, or part thereof, that the violation continues.

(i) If Franchisee fails, after adequate opportunity, to provide cable service requested by a Subscriber entitled to cable service, Franchisee shall promptly refund all deposits and advance charges paid for the service in question by said Subscriber. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Fifty Dollars (\$150.00) per day, or part thereof, that the violation continues.

(ii) If any Subscriber has made an annual payment in advance and thereafter terminates service for whatever reason, Franchisee shall refund to such Subscriber the prorated amount for unused service for the year, unless otherwise agreed to.

(iii) If a Subscriber terminates a monthly service prior to the end of a prepaid period, a pro rata portion of the prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by the Franchisee, unless a contract provides otherwise.

(iv) The refund provisions provided for in this Subsection do not alter or

waive Franchisee's responsibility to Subscribers under any separate contractual agreement or relieve Franchisee of any other responsibility under applicable law or contract.

(v) Refund checks will be issued promptly, but no later than the earlier of thirty (30) days or the next billing cycle of the customer following the resolution of a refund request, or the return of the equipment supplied by the Franchisee if service is terminated. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Fifty Dollars (\$150.00) per day, or part thereof, that the violation continues.

(vi) Credits for service will be issued no later than the next billing cycle of the customer following the determination that a credit is warranted. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

(4) Disconnection and downgrades.

Voluntary Disconnection

(i) Without the necessity for any notice period to Franchisee, a Subscriber may terminate any service at any time unless otherwise provided for by contract.

(ii) When receiving a request to terminate, Franchisee shall promptly disconnect from the Franchisee's Cable System or downgrade the service as requested. Charges for any voluntary disconnection, and any downgrade charges shall be in conformance with applicable law. The Franchisee shall not impose any charge for service delivered after the requested date of disconnection or downgrade, provided the request is made at least twenty four (24) hours prior to the requested date of disconnection or downgrade. As provided for under federal law, Subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

(iii) Any security deposit or other funds due a Subscriber that disconnects or downgrades service shall be returned to the Subscriber no later than either the next billing cycle, or thirty (30) days, whichever is earlier from the date disconnection or downgrade was requested, except where the Subscriber does not permit the Franchisee to recover its equipment, in which case the amounts owed shall be paid to Subscriber upon return of the Franchisee's equipment. Franchisee's material failure to comply with this Section may result in a fine in the amount of One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

(iv) Franchisee may not disconnect a Subscriber's cable service for non-payment unless the Subscriber is delinquent in payment for cable service and the amount the Subscriber must pay to avoid disconnection, or the amount owed, is stated

on the notice of intent to disconnect; and that such disconnection shall not be effected until after the due date of the delinquent fee or charge and shall include prior written notice of the intent to disconnect delivered to the Subscriber. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge and a service deposit, if applicable, the Franchisee shall promptly reinstate the Subscriber's cable service.

(v) No Subscriber may be disconnected for non-payment if payment of the outstanding balance is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

(vi) Any Subscriber whose service is terminated without good cause must be offered free service reconnection, which must occur by the next business day, and one (1) week of free service of the type Subscriber was receiving prior to disconnect. Good cause includes, but is not limited to, signal leakage, failure to pay, payment by check for which there are insufficient funds, theft of service, or abuse of equipment or Franchisee personnel. No Subscriber's service shall be disconnected due to a Franchisee's failure to timely or correctly post payments.

(viii) The technician performing the disconnection must perform such disconnection in a professional, safe and reasonable manner.

Involuntary Disconnection:

(ix) Franchisee may immediately disconnect a Subscriber if:

(a) A Subscriber fails to pay a monthly Subscriber or other fee or charge, the Franchisee may disconnect the service outlet of the Subscriber; however, such disconnection shall not be effected until twenty five (25) days after the due date of the monthly Subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the Subscriber in question. If the Subscriber pays within twenty five (25) days of the due date and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service. Franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for non-payment of services to the extent such rights are consistent with applicable state and federal law. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$2000.00) per day, or part thereof, that the violation continues.

(b) Nothing in this Ordinance shall be construed to prevent the Franchisee from removing its property from a premises of a Subscriber upon the termination of service consistent with FCC rules and regulations and any other applicable law. At the request of a Subscriber, a Franchisee shall remove all of its

facilities and equipment from the premises of the Subscriber within thirty (30) calendar days of the request. Where removal is impractical, such as with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed, unless there is a written agreement stating otherwise, provided, however, that such agreement must be consistent with applicable law and FCC rules. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day, or part thereof, that the violation continues.

(c) The Subscriber has damaged or destroyed or unlawfully tampered with the Franchisee's Cable System;

(d) The Subscriber is not authorized to receive a service, or is facilitating or aiding or abetting the unauthorized receipt of service by others; or

(e) Subscriber-installed or attached equipment is resulting in signal leakage in violation of FCC rules, provided the Subscriber has failed to correct immediately upon notice from Franchisee.

(x) After disconnection, the Franchisee shall restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and has paid all fees and charges, including any reconnect fees and all amounts owed the Franchisee for services unlawfully received and for damage to its Cable System or equipment.

(g) Reports.

(1) In addition to any other reports the County may request under this Ordinance, the County may, upon written request, require that the Franchisee furnish a quarterly report containing the total number of Subscribers, the total number of service requests, and the total number of Subscriber complaints requiring a service call which are received by the Franchisee. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

(2) If requested by the County, quarterly reports shall be provided to the County no later than thirty (30) days following the request.

(3) The County may upon written request that Franchisee prepare and furnish to the County reports and any other reasonable information relevant to the Franchisee's compliance with the customer service requirements of this Ordinance. Such reports may include the following:

(i) A service response report that tracks information, on a monthly basis, with regard to each service request, report of service problem and complaint received by Franchisee which shall include:

- (a) Telephone availability and conduct;
- (b) The date on which the Franchisee received such request, report or complaint;
- (c) The name of the Street where the related service is provided;
- (d) A description of the nature of such request, report or complaint;
- (e) Action taken by the Franchisee in response thereto and the date such response by the Franchisee was completed; and

(ii) A service interruptions report that tracks information on a monthly basis which shall include:

- (a) Total number, date and time of reported service interruptions;
- (b) Total hours that the system was out-of-service as related to planned upgrades, maintenance or channel line-up changes performed by Franchisee;
- (c) Geographic locations of service interruptions; and
- (d) Estimated number of Subscribers affected by each incident.

(4) Franchisee shall within fifteen (15) business days after receiving a written request from the County, provide a written report in response to any particular complaint. The report shall provide an explanation of the investigation, findings and corrective steps taken by Franchisee. If required for the investigation of a matter related to the Franchisee's performance under this Section or Franchise and subject to the Federal Cable Act privacy provisions, the County may request and be provided with copies of the Franchisee's records regarding individual Subscriber requests, reports or complaints to the extent consistent with the provisions of applicable law, including the privacy provisions of the Cable Act. Franchisee's material failure to comply with this Subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

(5) Franchisee shall make available upon written request, all results of any FCC required technical, performance or operational testing on the system.

(6) If reports requested by the County are not available, a detailed written explanation shall be provided by the Franchisee as to why such information is not

available and a date certain upon which such reports will be available to the County. The County Manager may authorize a period of excused non-compliance with this Subsection if the Franchisee can provide reasonable documentation that such period of non compliance was not within Normal Operating Conditions.

(7) After a Franchisee concludes its construction, rebuild, or upgrade, where a Franchisee offers and/or advertises any product or service including, but not limited to installation in the County, such products and services must be made available to all customers in the County within one hundred eighty (180) days of first being made available. Failure to provide any product or service to a customer consistent with the material terms and conditions of the offers and advertisements, upon request and agreement to pay, shall be considered a material violation of this Ordinance.

(8) Upon request, the Franchisee shall certify in writing to the County, based upon internal due diligence by the Franchisee that to the best of Franchisee's knowledge it is in substantial compliance with the standards set forth in this Section. At the request of the County, the Franchisee shall submit such documentation, as may be required, to demonstrate compliance of the Franchisee with this Section. This supplement documentation shall be submitted within forty five (45) days of the receipt by the Franchisee of the request of the County.

(10) In addition to complying with the customer service standards set forth in this Section, Franchisee shall comply with all customer service standards applicable to Cable Systems pursuant to FCC rules and regulations or any other generally applicable federal or state law concerning customer service standards, consumer protection, and unfair or deceptive trade practices, as the same may be amended from time to time.

(11) To the extent consistent with applicable law, the County expressly reserves the right to consider violations of the customer service requirements, in evaluating any renewal, modification, extension or transfer of any Franchise Agreement.

## **Section 17. Enforcement remedies and procedures.**

(a) A Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or a Franchise Agreement adopted pursuant to this Ordinance by reason of any failure of the County to enforce prompt compliance.

(b) Remedies and enforcement procedures.

(1) Responsibility for the administration of this Ordinance and any Franchise granted pursuant to this Ordinance, and for the resolution of all complaints against the Franchisee regarding the quality of service, service outages and related matters, is hereby delegated to the County Manager or his designee, who is empowered, among other things, to settle, or compromise any controversy arising from operations of the

Franchisee, either on behalf of the County or any Subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is alleged to be in non-compliance with this Ordinance or a Franchise Agreement, the County Manager or his designee shall have the power to require the Franchisee to provide service consistent with the terms of the Franchise, if in the opinion of the County Manager or his designee such request for service is reasonable. Any Person aggrieved by a decision of the County Manager, including the Franchisee, may appeal the matter to the County Commission for hearing and determination. The Board of County Commissioners may accept, reject or modify the decision of the County Manager. No adjustment, settlement, or compromise, whether instituted by the County Manager or by the Board of County Commissioners shall be contrary to the provisions of the Ordinance, any Franchise issued pursuant to the Ordinance or this Agreement, and neither the County Manager nor the Board of County Commissioners, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of the Ordinance or of the Franchise or this Agreement, or to interfere with any rights of Subscribers or any Franchisee under applicable federal, or state law or private contract.

(2) Whenever the County has reason to believe that a Franchisee has violated any provision of a Franchise Agreement or this Ordinance, the County shall first notify the Franchisee in writing of the violation and demand correction within the time period specified in this Subsection, which shall not be less than thirty (30) days or in the cases of violations measured on a quarterly or longer period (such as customer service standards), Franchisee's cure period shall be no less than one such period. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. If a Franchisee fails to demonstrate to the reasonable satisfaction of the County that no violation exists, or if Franchisee fails to correct the violation within the time prescribed, or if a Franchisee is unable to correct the violation and fails to commence corrective action within the time prescribed to diligently remedy such violation, the Franchisee shall then be given written notice of not less than ten (10) days of a hearing before the County Manager. The County Manager shall hear and consider all relevant evidence and thereafter render a written decision, which shall be delivered to the Franchisee by certified or registered mail.

(3) In the event the County Manager finds that a Franchisee has corrected the violation or promptly commenced correction of such violation after notice thereof from the County and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(4) In the event the County Manager finds that a violation exists and that a Franchisee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the County Manager may impose a fine following the procedures set forth below.



(5) Prior to assessing a fine, the County Manager shall mail to the Franchisee a written notice by certified or registered mail of the proposed fine, specifying the violation at issue. This notice may be combined with the written decision referred to in (b)(2) above and shall be referred to hereafter as the Assessment Letter. The Franchisee shall have thirty (30) days from the date of receipt of the Assessment Letter to file a written response to the notice of the County Manager. Written response of the Franchisee shall be signed by management level employee of Franchisee and all statements contained will be regarded as material representations to the County.

(6) Prior to assessing a fine, the County Manager or designee shall consider any justification or mitigating factor advanced in the written response of the Franchisee, including but not limited to rebates or credits to the Subscriber or a cure or commencement of a cure of the violation. The County Manager may, after consideration of the response of the Franchisee, waive or reduce any proposed refund or fine.

(7) Any fine will commence as of the date of the last day of the applicable cure period, or if Franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. This fine shall constitute liquidated damages to the County for the violation and the County may enforce payment of the fine in any court having jurisdiction. It is the intent of the County to determine fines as a reasonable estimate of the damages suffered by the County or its Subscribers.

(8) Intentional material misrepresentation by a Franchisee in any response in connection with a violation of this Chapter shall be considered a material breach of the Franchise Agreement, subject to penalty of no less than One Thousand Dollars (\$1,000.00) in liquidated damages per violation to the County, and may be grounds for the imposition of damages and Franchise revocation in the event of repeated violations.

(9) Franchisee's material failure to comply with any other provision, where a fine is not specified herein, shall result in a fine in the amount of Two Hundred Fifty Dollars (\$250.00) per day, or part thereof, that the violation continues.

(10) Any Person who intentionally files a false complaint against a Franchisee shall be subject to a fine in the amount of One Hundred Dollars (\$100.00) for the first violation and One Hundred Fifty Dollars (\$150.00) for each subsequent violation.

(11) Franchisee may submit an appeal regarding any decision of the County Manager directly to the Board of County Commissioners within thirty (30) days of the date of the notice of the decision to the Franchisee. Such appeal shall be made in writing and submitted by certified mail. The Grantee shall have the right to appeal the County's decision to a court of competent jurisdiction. Pending such appeal to the Board of County Commissioners or a court of competent jurisdiction, the assessment of any

liquidated damages subject of the appeal shall continue but collection or payment is stayed.

(c) The County may, after following the procedures set forth in Section 17(b), apply any one (1) of the following remedies in the event a Franchisee violates this Chapter, its Franchise Agreement or applicable local, state or federal law:

(1) Impose liquidated damages in such amount, whether on a per diem, per incident, or other measure of violation, as provided in the Franchise Agreement. Payment of liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the Franchise Agreement and the requirements of this Chapter.

(2) Revoke the Franchise in accordance with federal and state law, due process and the provisions of the Franchise Agreement and this Chapter pursuant to the procedures specified in Section 18.

(3) Seek any other remedy, the County may seek legal or equitable relief from any court of competent jurisdiction.

(4) Where the County elects to assess liquidated damages as provided in this Ordinance or the Franchise and such liquidated damages have been paid, such damages shall be the County's exclusive financial remedy for the time period assessed, unless the County can demonstrate its actual damages exceed the paid liquidated damages, in which case the County may pursue any remedy. Nothing in this Section is intended to preclude the County from exercising any other right or remedy with respect to a breach that continues past the time the County stops assessing liquidated damages for such breach.

(b) In determining which remedy or remedies are appropriate, the County shall take into consideration the nature of the violation, the Person or Persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the County determines are appropriate to the public interest.

(c) Failure of the County to enforce any requirements of a Franchise Agreement or this Chapter shall not constitute a waiver of the County's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

## **Section 18. Revocation of Franchise.**

(a) In addition to all of the rights and powers reserved by or pertaining to the County, the County reserves as an additional and as a separate and distinct power the right to terminate the Franchise and all rights and privileges of the Franchisee hereunder in any of the following events or for any of the following reasons:

(1) Should the Franchisee by act or omission breach and fail to cure any material term or condition of this Ordinance on a repeated basis;

(2) Should the Franchisee become insolvent, unable or unwilling to pay its debts or be adjudged a bankrupt or all or a substantial part of the Franchisee's facilities be sold under an instrument to secure a debt and not be redeemed by the Franchisee within thirty (30) days from the sale;

(3) Should the Cable System or any substantial portion thereof materially fail to meet in total the minimum FCC signal reception and Subscriber viewing standards for three consecutive annual tests;

(4) Should the Franchisee be found to have committed any fraud or deceit in its conduct or relations under the Franchise with the County or Subscribers or potential Subscribers;

(5) Should the Franchisee materially fail to maintain minimum technical or customer service standards required by federal law and this Ordinance for three consecutive quarterly reporting periods, following notice to the Franchisee to commence said reporting and appropriate cure periods;

(6) Repeated failure to remedy violations shall be grounds for Franchise revocation;

(b) For Franchise violations that constitute grounds for revocation described in Subsection (a), Franchisee shall be given thirty (30) days written notice to cure said violations. If the violations are not cured then Franchisee shall be given thirty (30) days' written notice of a hearing to be held before the Board of County Commissioners to determine the appropriate remedy. At the hearing, the Board of County Commissioners shall hear and consider all relevant evidence and determine whether or not to revoke the Franchise Agreement. The Franchisee shall be entitled to present any information it deems relevant to the issue of revocation and shall have the right to question and cross examine any persons presenting information on the issue of revocation to the Board of County Commissioners.

(c) No revocation shall be effected unless or until the County shall have adopted a resolution setting forth in writing the causes and reasons for the revocation and the effective date thereof.

(d) If the Franchise is revoked and the County acquires ownership of the Cable System or effects a transfer of the System, the acquisition or transfer shall be at fair market value; or in the case of any Franchise existing on the effective date of this Chapter, at a price determined in accordance with the Franchise if such Franchise contains provisions applicable to such an acquisition or transfer.

(e) Unless expressly required by applicable law, under no circumstances is the County obligated to take ownership of the System.

(f) Any dispute arising with respect to this Ordinance or a Franchise Agreement granted pursuant to it shall be subject to review by the state and federal courts situated in and for Clay County, Florida.

**Section 19. Foreclosure, receivership, and abandonment.**

(a) Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of a system, or upon the termination of any lease covering all or part of a system, a Franchisee shall immediately notify the County of such fact and such notification shall be treated as a notification that a change in control of the Franchisee has taken place, and the provisions of this article governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

(b) Receivership. The County shall have the right to cancel a Franchise Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of Franchisee's Franchise Agreement and this article and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this article and the applicable Franchise Agreement.

(c) Abandonment. Upon lawful termination of the Franchise by passage of time or otherwise, without the right of renewal, and unless the Franchisee transfers the system to a subsequent Franchisee approved by the County, upon request of the County, the Franchisee shall remove its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the right of way and shall restore any property, public or private, to its original condition prior to the installation, erection, or construction of the System. The Franchisee shall have no obligation to remove underground facilities unless specifically requested to do so by the County. Restoration of county property, including but not limited to, the public rights of way, shall be in accordance with the directions and specifications of the County. If such removal and restoration are not completed within twelve (12) months after the notice by the

County delivered in writing to the Franchisee, all of the Franchisee's property remaining in the affected public rights of way shall, at the option of the County, be deemed abandoned and shall, at the option of the County, become the property of the County. In the event the Franchisee fails or refuses to remove its System or satisfactorily restore all areas to as reasonably as close to the condition in which they existed prior to the original construction of the System, the County, at its option, may perform such work and collect the cost thereof from the Franchisee. The County shall give fair market value if it elects to acquire the System upon termination.

(d) Emergency removal of plant If at any time, in case of fire, hurricane, or other disaster in the County, it shall become necessary in the reasonable judgment of the County to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the System, the County shall have the right to do so at the sole cost and expense of the Franchisee. Where reasonably possible, the County shall contact the Franchisee in the case of such emergency. The Franchisee shall bear all costs of reinstallation, repair, and other costs resulting from or arising out of the emergency cutting or removal of the System. The Franchisee shall not be required to grant a rebate or credit to a Subscriber if the County cuts the cable during any such emergency.

## **Section 20. Required Records.**

(a) Open books and records.

(1) In the event the County is authorized by law to collect a Franchise fee, then each Franchisee shall at all times maintain complete and accurate billing and payment records in a manner that allows the County at all times to determine whether the Franchisee is accurately calculating and remitting its Franchise fee. Should the County reasonably determine that the records are not being maintained in such a manner, the Franchisee shall immediately correct the manner in which the books and records are maintained in order to comply with this Section. All financial books and records shall be maintained in accordance with the regulations of the FCC and any other governmental entity regulating Cable Systems, as well as with generally accepted accounting principles.

(2) In the event the County is authorized by law to collect a Franchise fee, then each Franchisee and its agents and outside contractors shall make available for examination by the County or its authorized representative or agent, during normal business hours, the books, records and accounts and other documentation, hereinafter collectively referred to as the "reports," of Franchisee that, as determined by the County, are necessary to determine the accuracy of the revenues generated from cable services, and shall permit the County, or its authorized representatives or agents to make and remove copies of jurisdictional coding records (address ranges) and such other records as may be agreed upon by the Franchisee and the County. In the event the reports are not available to the County for examination within the corporate limits of the County, the Franchisee shall reimburse the County for the reasonable travel

expense of the County's representative for travel to the location where the reports are maintained.

(3) Upon proper request by the Franchisee, any information required to be submitted to the County that can be kept confidential by law shall be treated as confidential in accordance with such law.

(4) Reports required under this Section shall be furnished at the sole expense of the Franchisee, except as otherwise provided for in this Ordinance or the Franchise Agreement.

(5) A false entry in the records of the Franchisee pertaining to a material and substantial fact that has been knowingly made by the Franchisee shall constitute a material violation of this Ordinance.

(b) Communications with regulatory agencies. Copies of all petitions, applications, communications, and reports submitted by each Franchisee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting system, operations, and any responses from these regulatory agencies to Franchisee shall be made available at any time to the County upon written request. If the County is specifically named in any pleading or response, the Franchisee shall furnish the County with a copy immediately without the necessity of a request.

(c) Annual reports.

(1) Upon written request by the County, Franchisee shall provide to the County no sooner than ninety (90) days from the close of Franchisee's fiscal year during the term of a Franchise Agreement, in duplicate, the following:

(i) If Franchise fees are paid directly to the County, a revenue statement certified by a representative of the Franchisee showing, in accordance with a Franchise Agreement, the annual gross revenues of the Franchisee for the preceding fiscal year;

(ii) A current list of names and addresses of each officer and director and other management personnel of the Franchisee;

(iii) A copy of all documents that relate to the Franchisee's system that were filed with any federal, state, or local agencies during the preceding fiscal year and that were not previously filed with the County;

(iv) A statement detailing the Franchisee's current billing practices and charges;

- (v) A copy of the Franchisee's current Subscriber service contract;
- (vi) A copy of annual reports to stockholders, if any, for operating company and parent company;
- (vii) A Subscriber report indicating the total number of Subscribers.
- (viii) Any report filed which concerns the Franchisee's Cable System in Clay County, Florida, and which is filed with any governmental entity.

(2) The County and its agents and representatives shall have authority to arrange for and conduct an audit of the books and records of any Franchisee that is reasonably necessary for the enforcement of this Ordinance or a Franchise Agreement. A Franchisee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of the County's ability, of the books, records, and documents that the County wants to review.

(d) Additional reports and assistance. Upon request of the County, each Franchisee shall provide additional information which is reasonably necessary to the County's proper enforcement of a Franchise Agreement adopted pursuant to this Ordinance. In addition, upon request, every Franchisee shall cooperate and assist the County in interpreting and understanding any information provided under this Ordinance.

## **Section 21. General financial provisions.**

(a) Franchise fee. In the event of a change of law which authorizes the County to impose a Franchise fee or tax on cable services, then as compensation for a Franchise and in consideration of permission to use the rights-of-way of the County for the construction, operation and maintenance, of a Cable System, and to defray the costs of regulation, each Franchisee shall pay to the County the maximum amount allowed by federal and state law, or if federal and state law do not address the issue of fees, then that amount agreed to in a Franchise Agreement, whichever is greater.

(b) Manner of payment. If authorized by state and federal law, Franchisee shall pay the required amount to the County within forty five (45) days following the end of each calendar quarter during the term of the Franchise Agreement. Should any additional monies be due to the County as a result of information contained in the annual financial report of the Franchisee or by audit, the Franchisee shall pay such additional monies to the County within sixty (60) days after the submission of said report to the County.

(c) Late charge. If any payment required under this Ordinance or the Franchise Agreement is not actually received by the County on or before the applicable due date provided herein, the Franchisee shall pay interest thereon, from the due date to the date the payment is actually received by the County, at a rate equal to one and one-half percent (1.5%) per month on the unpaid balance.

(d) Delinquency. Should any of the Franchisee's payments required hereunder be delinquent for thirty (30) days, the County may in accordance with the procedures set forth herein with respect to Franchise violations declare the Franchisee in default and treat the same as a material breach of a Franchise Agreement. The Franchisee shall have the right to cure which if it does so shall serve to terminate any revocation proceedings the County may bring as a result of the delinquency.

(e) Acceptance of payment No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the County may have for farther sums payable under the provisions of this article or a Franchise Agreement. All amounts paid shall be subject to audit and recomputation by the County.

## **Section 22. Non-discrimination.**

(a) Discriminatory practices prohibited. No Franchisee shall deny service, deny access, or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, sex, age, disability or economic condition. Each Franchisee shall strictly adhere to the equal employment opportunity requirements of state and federal law, and shall fully comply with all other applicable federal, state, and local laws, and executive and administrative orders pertaining to non-discrimination.

(b) Franchisee shall comply with the privacy provisions of the Federal Cable Act.

## **Section 23. FCC decisions/preemptions.**

Failure of a Franchisee to obtain the necessary permits and licenses from the FCC within one (1) year of the issuance of an initial Franchise shall cause the Franchise to become null and void, unless the Franchisee petitions the County for an extension of time upon good cause shown.

## **Section 24. Prohibited Acts.**

No person shall undertake to provide any Cable System within the territorial jurisdiction of the County without specific authorization pursuant to this Ordinance. Violation of this Section shall be punishable as provided by general Florida law.

## **Section 25. Force Majeure.**

Notwithstanding any other provisions of this Ordinance, a Franchisee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Ordinance due to strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, civil



disturbance, sabotage or vandalism, customer tampering or interference, act of public enemy, fire, flood, or other events, to the extent that such causes or other events are beyond the control of the Franchisee.

**Section 26. Severability.**

If any Section, Subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**Section 27. Limited Repeal; Prospective Effect.**

This Ordinance is intended to be prospective in effect. All existing cable Franchises in the County shall continue to be governed by Ordinances 83-69 and 88-56, codified at Article II, Division 2 of the Clay County Code, until the earlier of the date of their expiration, execution of a renewal or modified franchise agreement pursuant to this Ordinance or a transfer of the franchise or control of the system. All initial applications, applications for a renewal, modifications and transfers of existing cable Franchises shall be governed by this Ordinance which shall be codified at Article II, Division 3 of the Clay County Code, as the same may be amended from time to time.

**Section 28. Effective Date.**

This Ordinance shall go into effect as provided for under Florida law.